

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES CHARLES CARTER, JR.,

Defendant-Appellant.

UNPUBLISHED

September 19, 2006

No. 261412

Wayne Circuit Court

LC No. 04-008637-01

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES CHARLES CARTER, JR.,

Defendant-Appellant.

No. 261413

Wayne Circuit Court

LC No. 04-008649-01

Before: Davis, P.J., and Murphy and Schuette, JJ.

PER CURIAM.

In these consolidated cases, defendant appeals multiple criminal sexual conduct (CSC) convictions arising out of the sexual abuse of two minor step-daughters. We affirm.

Defendant first argues that there was insufficient evidence to support the CSC convictions. Defendant simply contends that this was a he-said, she-said case, solely revolving around the complainants' credibility and based on nothing more than the complainants' testimony, without supporting or corroborating evidence. Therefore, the convictions cannot stand.

We review claims of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Importantly, for purposes of the issue

raised here, this Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. *Id.* at 514-515. All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The proposition that defendant's prosecution was entirely dependent on the complainants' testimony does not provide a basis to conclude that the evidence presented was insufficient. Indeed, MCL 750.520h specifically provides that "[t]he testimony of a victim need not be corroborated in [CSC] prosecutions" At trial, defendant was free to attack the complainants' credibility and the weight of the evidence, and the jury resolved these issues in favor of the prosecution by finding that defendant was guilty beyond a reasonable doubt. We will not reassess the jury's determination of credibility, and MCL 750.520h permits CSC convictions on the basis of uncorroborated testimony by victims. Accordingly, reversal is unwarranted.¹

Defendant also argues that he was denied his constitutional right to the effective assistance of counsel. We disagree.

Generally, a defendant claiming ineffective assistance of trial counsel must move for a new trial or file a motion to remand the case for an evidentiary hearing to preserve the issue for review. *People v Bero*, 168 Mich App 545, 554; 425 NW2d 138 (1988); *People v Juarez*, 158 Mich App 66, 73; 404 NW2d 222 (1987). Here, defendant made no such motions, thus the issue is unpreserved. Where a defendant's argument of ineffective assistance of counsel is unpreserved, the defendant's claims of error must find support in the existing trial court record. *Bero, supra* at 554. Whether a person has been denied the effective assistance of counsel is a mixed question of fact and constitutional law, which this Court reviews, respectively, for clear error and de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

In *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001), our Supreme Court, addressing the basic principles involving a claim of ineffective assistance of counsel, stated:

To justify reversal under either the federal or state constitutions, a convicted defendant must satisfy the two-part test articulated by the United States Supreme Court in *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). See *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). "First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not performing as the 'counsel' guaranteed by the Sixth Amendment." *Strickland, supra* at 687. In so doing, the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. *Id.* at 690. "Second, the defendant must show that the deficient performance prejudiced

¹ Defendant's sufficiency argument is generalized and lacks any specific contentions with respect to how the victims' testimony may have failed to establish the elements of the CSC charges upon which he was convicted. Therefore, we shall not independently explore the issue.

the defense.” *Id.* at 687. To demonstrate prejudice, the defendant must show the existence of a reasonable probability that, but for counsel’s error, the result of the proceeding would have been different. *Id.* at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* Because the defendant bears the burden of demonstrating both deficient performance and prejudice, the defendant necessarily bears the burden of establishing the factual predicate for his claim. See *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

Defendant cites three portions of testimony in support of his argument that three witnesses testified at length to what the victims told them, thereby violating hearsay rules. Contrary to defendant’s contention, review of these trial transcripts reveals that statements made by the victims were not solicited during the examinations. On the only two occasions where the witnesses started to offer potential hearsay testimony, defendant’s attorney objected and the trial court sustained the objection. Defendant, therefore, has failed to identify any statements that constituted inadmissible hearsay. Counsel’s performance was not deficient as it is unnecessary to make meritless or futile objections. *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

Affirmed.

/s/ Alton T. Davis
/s/ William B. Murphy
/s/ Bill Schuette